

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JUDITH A. JOHNSON,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

Case No. C07-5298 FDB

ORDER OF EAJA FEES, COSTS AND
EXPENSES

This matter comes before the Court on Plaintiff's motion pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412 (EAJA), for an award of attorney's fees in the amount of \$22,700.63, costs in the sum of \$565.40, and expenses in the sum of \$104.40. The Commissioner has filed a response requesting that the award of attorney's fees be reduced to account for unreasonable and excessive hours.

The Ninth Circuit has established that the Equal Access to Justice Act (EAJA) applies in social security cases. Wolverton v. Heckler, 726 F.2d 580 (9th Cir. 1984).

The EAJA provides in pertinent part:

Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses ... incurred by that party in any civil action ... brought by or against the United States in any court having jurisdiction over that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

1 A party can be found to prevail when there is a "material alteration of the legal relationships
2 of the parties," and the material alteration is "judicially sanctioned." Carbonell v. INS, 429 F.3d
3 894, 898 (9th Cir. 2005). A material alteration of the legal relationships of the parties occurs when
4 one of the parties is required to do something directly benefitting the other party that they would not
5 otherwise have had to do. Id. at 900. A party need not succeed on every claim in order to prevail.
6 Rather, a plaintiff prevails if he has succeeded on any significant issue in litigation which achieved
7 some of the benefit sought in bringing suit. Id., nt. 5. The government does not dispute that the
8 Plaintiff was the prevailing party.

9 The Supreme Court has defined the term "substantially justified" as "justified in substance or
10 in the main - that is, justified to a degree that could satisfy a reasonable person." Pierce v
11 Underwood, 487 U.S. 552, 565 (1988). To be substantially justified, the government must have "a
12 reasonable basis both in fact and in law." Id. at 568. The Ninth Circuit has held that the government
13 must be substantially justified during both the underlying agency action and the litigation itself. Al-
14 Harbi v. INS, 284 F.3d 1080, 1084-85 (9th Cir. 2002). Thus, the government must meet this
15 threshold twice - once with regard to the underlying agency action, and then with regard to its
16 litigation position in the proceedings arising from that action. See Kali v. Bowen, 854 F.2d 329, 332
17 (9th Cir. 1988). The government has not taken a position on whether its position on this case was
18 substantially justified. Thus, without government argument to the contrary, this Court finds that the
19 government's position was not substantially justified.

20 By Order of the Ninth Circuit Court of Appeals, this action was reversed and remanded to the
21 Social Security Administration for further administrative proceedings. The Order is fully favorable
22 to Plaintiff and materially advances her position. The Defendant's position was not substantially
23 justified as defined by the EAJA, and there are no special circumstances that would make an award
24 in this case unjust.

25 The party seeking fees must submit "an itemized statement ... stating the actual time

1 expended and the rate at which fees and other expenses were computed." 28 U.S.C. §
2 2412(d)(1)(B). The appropriate number of hours includes all time "reasonably expended in pursuit
3 of the ultimate result achieved." Hensley v. Eckerhart, 461 U.S. 424, 431 (1983). However,
4 "excessive, redundant, or otherwise unnecessary" hours should be excluded from the fee award. Id.
5 at 434. Although the fee applicant bears the burden of documenting the appropriate hours expended,
6 "the party opposing the fee application has a burden of rebuttal that requires submission of evidence
7 to the district court challenging the accuracy and reasonableness of the hours charged or the facts
8 asserted by the prevailing party in its submitted affidavits." Gates v. Deukmejian, 987 F.2d 1392,
9 1397-98 (9th Cir. 1993).

10 Plaintiff filed the requisite affidavit documenting attorney's fees in the amount of \$9,120.94
11 for 53.7 hours of work by her attorney before the district court and in the amount of \$13,579.68 for
12 78.7 hours of work before the court of appeals.

13 The government contends that the number of hours in the district court is excessive given the
14 narrow issue before the district court. Concerning the hours spent in the court of appeals, the
15 government contends that some of the briefing is identical to that presented to the district court and
16 thus, the claimed hours are excessive. The government proposes that the hours requested for the
17 district court should be reduced to 40 hours and the court of appeal hours be reduced to 60 hours.
18 At the 2008 statutory maximum hourly rates under EAJA of \$172.85, this amounts to total EAJA
19 fees of \$17,285.00, reduced from the requested \$22,700.63.

20 This contention lacks merit. The attorney affidavit sets forth an itemized accounting for the
21 district court and appellate work product. Other than indicating that social security cases are
22 routinely litigated in forty hours or less and the instant litigation was primarily confined to one issue
23 and that there appeared to be some duplication of district court content in the appellate briefs, the
24 government provides no explanation for the request for reduction of 13.7 hours in the district court
25 and 18.7 in the appellate court. Arbitrarily limiting compensation to no more than forty hours in the

1 district court and no more than sixty hours in the appellate court is unwarranted. The court must
2 review the submitted work log to determine the reasonableness of hours requested in each case. See
3 Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). There is no hard-and-fast cap on attorney fee
4 awards at forty hours that should be applied regardless of the circumstances. Social security cases
5 are fact-intensive and require a careful application of the law to the testimony and documentary
6 evidence, which must be reviewed and discussed in considerable detail. Patterson v. Apfel, 99
7 F.Supp.2d 1212, 1213 (C.D. Cal. 2000).

8 Further, the mere fact that there is a duplication of material in the appellate briefing does not
9 imply that the hours expended on appellate work are also duplicative. The government's evidence is
10 insufficient to warrant a reduction in hours to reflect 32.4 hours of excessive and duplicative work
11 product.

12 Analysis of the time records submitted in support of Plaintiff's fee petition establishes that
13 the time her counsel expended in litigation was reasonable. The record reflects that this case was
14 vigorously contested by the government. The time billed for preparation of the case and briefing in
15 the district and appellate courts was neither excessive nor unreasonable. The Court finds Plaintiff is
16 entitled to compensation for all hours expended by her attorney in the course of this litigation.


17 ACCORDINGLY;

18 IT IS ORDERED:

19 Plaintiff's Motion for Attorney's Fees, Costs, and Expenses [Dkt. # 30] is **GRANTED**.

20 Plaintiff's attorney Eitan Kassel Yanich is hereby awarded EAJA fees of \$22,700.63, costs
21 in the sum of \$565.40, and expenses in the sum of \$104.40.

22 DATED this 15th day of March, 2010.

23 
24 FRANKLIN D. BURGESS
25 UNITED STATES DISTRICT JUDGE
26